

In the United States Court of Federal Claims

No. 09-261C

(Filed August 18, 2009)

(Not for Publication)

MARK A. STANLEY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

ORDER OF DISMISSAL

Plaintiff pro se Mark Stanley alleges a variety of claims arising from both his incarceration by the California Department of Corrections & Rehabilitation and the proceedings that led to his incarceration. Plaintiff names as defendants the United States, the State of California and various state officials, and he requests compensatory damages and injunctive relief. The Government seeks dismissal on the grounds that this Court lacks subject matter jurisdiction over Plaintiff's claims. Because Plaintiff's claims fall outside this Court's jurisdiction, the Government's motion is **GRANTED**, and Plaintiff's complaint is **DISMISSED**.

Background¹

Plaintiff, who is currently incarcerated, alleges that various deficiencies occurred during his criminal trial proceedings. Plaintiff argues that orders issued by the judges who presided over his criminal trial -- as well as the outcome of the trial itself -- violated his due process rights. Specifically, Plaintiff claims that "his constitutional rights to due process and . . . right to a jury trial were violated." Compl. at 6. In addition to his allegations concerning the violation of his constitutionally protected rights, Plaintiff claims that his incarceration is illegal as it is the result of

¹ The following background is derived from Plaintiff's complaint, and should not be construed as findings of fact.

a “false arrest.” See Addendum to Compl.; see also Compl. at 2, 9, 14, 33-34.

According to Plaintiff, the judges of the Superior Court of California who presided over his criminal proceedings failed to protect Plaintiff’s “Constitutional Due Process Rights” by issuing “void or voidable order(s) to impose Threat, Duress, or Coercion.” Compl. at 1 (emphasis omitted). Further, Plaintiff alleges that the judges inappropriately imposed an “exceptional sentence” thereby violating the Sentencing Reform Act. Id. at 7-10. Plaintiff claims that as a result of his sentence, he should have been afforded a “formal evidentiary hearing,” and his sentence was based upon facts that were not found by a jury, thereby violating his right to a jury trial. Id. at 9, 14-17.

Plaintiff also argues that his rights under the Sixth Amendment to the Constitution were violated because he received ineffective assistance of counsel as a result of his trial attorney’s failure to object to “the facts that the [trial] court relied upon to impose an exceptional sentence.” Id. at 15. Further, Plaintiff alleges that the trial judges violated his rights “via Fraud, Concealment, Misrepresentation, and Delay.” Id. at 18 (emphasis omitted).

As a result of these alleged wrongdoings, Plaintiff seeks monetary damages, the “return of all private and personal property,” and release from prison. Id. at 31.

Discussion

Subject matter jurisdiction must be established at the outset of any case before the Court proceeds to the merits of the action. See Hardie v. United States, 367 F.3d 1288, 1290 (Fed. Cir. 2004); BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 88-89 (1998)). “If the Court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim.” Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (internal quotation omitted). Plaintiff bears the burden of establishing the Court’s jurisdiction. Id. (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)). When considering a motion to dismiss for lack of subject matter jurisdiction, the Court will accept the complaint’s undisputed allegations as true and construe the complaint in a manner favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Complaints drafted by pro se litigants are held to “less stringent standards than formal pleadings drafted by lawyers.” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However, this latitude does not allow a pro se plaintiff to subvert the Court’s jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Pro se plaintiffs still bear the burden of establishing the Court’s subject matter jurisdiction. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

This Court’s jurisdiction is set forth in the Tucker Act, 28 U.S.C. § 1491. The Tucker Act states that this Court “shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or

unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The plaintiff must demonstrate that the source of substantive law he relies upon for his claim mandates compensation by the Federal Government for damages. United States v. Mitchell, 463 U.S. 206, 216-17 (1983). However, the Tucker Act, by itself, “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan, 424 U.S. 392, 398 (1976). Accordingly, a plaintiff must identify a separate Constitutional provision, statute, or regulation which if violated, provides for a claim for money damages against the United States. Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (“[A] plaintiff must identify a separate source of substantive law that creates the right to money damages,” i.e., a source which is “money mandating.”); James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998). A statute provides for monetary damages against the United States if it is “reasonably amenable to the reading that it mandates a right of recovery in damages.” United States v. White Mountain Apache Tribe, 537 U.S. 465, 473 (2003). Even liberally construed, Plaintiff’s complaint fails to cite any money-mandating Constitutional provision, statute or regulation that would enable this Court to exercise jurisdiction over his claims.

Plaintiff’s claim that he received ineffective assistance of counsel cannot be reviewed by this Court. A claim of ineffective assistance of counsel in violation of the Sixth Amendment to the Constitution does not independently mandate the payment of money damages by the United States. See Smith v. United States, 51 Fed. Cl. 36, 38 (2001); Milas v. United States, 42 Fed. Cl. 704, 710 (1999). Similarly, the Seventh Amendment’s guarantee of a right to trial by jury is not money-mandating, and Plaintiff’s allegation that this right was violated cannot be reviewed by this Court. Fullard v. United States, 77 Fed. Cl. 226, 230 (2007).

To the extent that Plaintiff alleges violations of his due process rights, these claims are not premised on a money-mandating Constitutional provision and also lie outside this Court’s jurisdiction. “This Court’s jurisdiction only extends to those provisions of the Constitution which are money-mandating and does not include claims based on the First Amendment, the Due Process Clause, the Eighth Amendment, or the Equal Protection Clause.” Cosma-Nelms v. United States, 72 Fed. Cl. 170, 172 (2006); accord LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir.1995)).

It is firmly established that the Court of Federal Claims does not possess jurisdiction over tort claims against the United States. Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). This Court lacks jurisdiction to hear all of Plaintiff’s claims which allege that he is the victim of tortious conduct, including his claims that are grounded upon fraud.

Further, Plaintiff’s claims against the State of California, the trial judges who presided over his criminal proceedings, and the court system of California must be dismissed because this Court lacks jurisdiction over these entities and individuals. See, e.g., Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) (“[T]he only proper defendant for any matter before this court is the United States, not its officers, nor any other official.”).

Finally, Plaintiff asks this Court to order the State of California to release him from prison. It is well established that this Court lacks authority to grant such equitable relief. See Bowen v. Massachusetts, 487 U.S. 879, 905 (1988); see also Richardson v. Morris, 409 U.S. 464, 465 (1973); Glidden Co. v. Zdanok, 370 U.S. 530, 557 (1962); Wheeler v. United States, 11 F.3d 156, 159 (Fed. Cir. 1993).

Conclusion

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**, and Plaintiff's complaint is **DISMISSED** with prejudice. The Clerk is directed to enter judgment accordingly.

s/Mary Ellen Coster Williams
MARY ELLEN COSTER WILLIAMS
Judge